

**FINAL MEETING MINUTES
SEWAGE HANDLING AND DISPOSAL ADVISORY COMMITTEE
JULY 17, 2009**

Agenda:

Administration

- Call to Order
- Approve Agenda
- Introductions (existing and new members...what is important to you...why did you accept this appointment?)
- Review and approve minutes from March 20th meeting (attached)
- Review committee rules (attached file)

New Business

1. Status of Regulatory Actions
 - a. Interim Alternative Systems Rules- Dwayne Roadcap (VDH)
 - b. Emergency Alternative Systems Regulations – Allen Knapp (VDH)
 - c. Final Onsite Systems Regulations- Allen Knapp
 - i. Review of Current status
 - ii. Review proposal for conveyance regulations for large systems (attached file)
 - iii. Ask for volunteers to work on residuals portions of the final regulations
2. Legislative Update- Engineering Exemption for certain pump systems- Allen Knapp
3. Betterment Loan Eligibility Program- Dwayne Roadcap
4. Well Regulations changes (Geothermal heat pumps, yield and storage)- Jim Bowles (VDH)
5. Next meeting dates

Old Business

Adjourn

Barrett Hardiman, the newly appointed chairman, reviewed the proposed agenda for the meeting. There were no additions or deletions, the agenda was accepted by the committee.

The Chairman asked the members in attendance to introduce themselves and give a brief explanation of their interests in serving on the committee:

Jim Pyne, Hampton Roads Sanitations district for 31 years, member of the committee since the mid-80s, operate all of the municipal systems in middle Peninsula

John Harper, Virginia Association of Professional Soil Scientists, represents soil scientists,

Barrett Hardiman, Homebuilder's association, goal as chairman is to help keep organized, keep focus, keep moving, learn, and make sure everybody is heard,

Ray Freeland, Society of Prof. Engineers, keeping abreast of the changes with the VDH

Colin Bishop, represent manufacturers on behalf of installers,

Bill Keeling, Dept. of Conservation and Recreation, provide concept of non-point source position

V'lent Lassiter, Chesapeake Bay local assistance; to assure the new O&M regs do not conflict with the Ches Bay rule

Rob Wadsworth, Citizen at Large; see how rules apply to housing and getting systems approved

Mike Lynn, Virginia Onsite Wastewater Recycling Association, represents the private sector side of the industry primarily; does have a small but significant portion of regulators; still under the national umbrella; strong state association

Joe Lerch, Virginia Municipal League

Andre Fontaine, Virginia Association of Realtors

The Chairman asked for comments on the draft minutes from the March 20, 2009 meeting. Two comments were heard and accepted- First page, first paragraph under "New Business," fourth sentence, between the words "450 gpd were" and "great" change the word "to" to "too." In the last sentence, between the words "meeting" and "12:56 p.m." change the word "and" to "at". Upon motion and second, the minutes were approved.

The new members were provided a copy of the committee's rules and there followed a short discussion of the rules.

New Business

Item 1.a. Dwayne Roadcap (VDH) reviewed the Department's new guidance document (GMP 149) pertaining to interim rules for alternative onsite systems based on HB 1788 (2009).

VDH requires owner to record notice in land records as precondition to issuance of operating permit. Notice may be recorded earlier.

Owner required to operate in accordance with manufacturer's instructions, VDH regulations and policies, local ordinance, whichever is most stringent.

Appendix 1 contains a list of treatment units approved for use in VA along with the O&M manuals. LPD systems and drip dispersal must have O&M manuals. VDH has identified Three manufacturers of drip; designer is responsible for LPD manual.

Appendix 2 is the notice for recordation. Can be recorded anytime from the issuance of the construction permit until time of issuance of the OP. Staff guidance is that we are looking for O&M manuals from the manufacturer or an assembly of component manuals put together by the designer. One concern from local health departments is that the manual may reflect a system different from what was actually installed. For instance, there may be a dispute between a designer and a builder. The result could be the designer not submitting an accurate O&M manual and the builder submitting a manual that is not accurate or complete. Another scenario may involve the uncertainties of construction. Design changes are sometimes made during construction and may not be reflected in the O&M manual. Some local health departments are asking the designer to seal the manuals.

Dwayne asked for input from the committee on this point. The recording requirement of the legislation only applies to residential systems. The Department has no authority to require recordation for non-residential systems. The policy requires the local health departments to develop an inventory of alternative onsite systems.

Pete Kessecker (audience): Why did VDH not include chambers? Mr. Roadcap said VDH did not originally see them as part of an alternative system. VDH can look at that.

John Harper: He suggests that this is not an issue. What kind of maintenance would you do on chambers?

Jim Pyne: O&M manual management is a large headache for us. The Department of Environmental Quality makes them part of the permit. You are very careful about what you put in the manual. It depends on the legal status.

Dwayne: We focused on getting the manuals together for the public. We have not focused on review of the manuals. We currently have no rule or standard for reviewing the O&M manuals.

Jim Pyne: Is it part of the permit?

Dwayne: Yes. The statute requires the owner to operate the system in accordance with the manual (or local or state regulation). The manual will be attached to the OP.

Todd Benson: What sort of staff commitment is required to review the manuals?

Dwayne: We have about 40-50 manuals on the website now. Gathering the list took several weeks...we are doing what it takes.

Joe Lerch: Regarding HB 1788, does the statute include the "one-off" designs?

Dwayne: Yes.

Joe: Do they need to be recorded?

Dwayne: Correct. All of the instructions are from proprietary products-.

Joe: Are the instructions themselves proprietary?

Colin Bishop: The manuals are out there for use by anybody. The problem would be if someone wanted to change it.

Joe: If there is a change in the design, is there a requirement to update the notice?

Dwayne: The interim requirement is generic and refers to information on file with VDH. It is not specific for the design.

Ray Freeland: I think there needs to be something in the O&M manual that ties the design to what's been installed. It's important to have a system-specific manual.

Mike Lynn: The owners are not allowed to operate systems so providing an O&M manual to the owner may be unnecessary. Operators are the only ones allowed to operate the system. Maybe a simple 2-page sheet is all that is needed. One needs to make sure that whoever maintains it follows the right frequency.

Another point that affects Chesapeake Bay is that the manuals don't address septic tank pumping. We need to make sure people know the do's and don'ts of systems.

John Harper: There is a sequence of events. In general, it comes down to the completion statement procedure.

Barrett Hardiman: If VDH required the designer to certify the O&M manual as appropriate for the system design (as built), would that provide the kind of responsibility we are looking for?

General discussion: It's got to go back to the designer. He's the one who knows which components are being used. There may be a number of different components.

Dwayne: Some designers say they are going to write a manual for each system designed. Others say they are only going to use the proprietary manuals developed by the manufacturers.

Colin: owner has a homeowners manual, they have to hand somebody, how do we ensure that the HD gets the right manual, do we need a standardized manual for O&M manuals contain? If that happens, it has to be at the completion statement stage. Your completion statement says that what is in field, it's the designer's job to make sure that the HD is getting the right O&M manual. The designer is not certifying the maintenance manual.

I wonder if we need a manual, these are the parts and this is the inspection frequency on this part, I can see that the designer certifies this is the correct manual along with a list of dos and don'ts.

Is there anything with the permits to require them to maintain a service contract? No, owner could get a system and then decide that is too expensive to have. That is a consideration of the emergency regs in development. Until we get to that point, we don't have anything like that. At some point, there will be an inspection due from an operator, by such and such date, you need to submit an inspection, the inspection would show that something is amiss so the HD could go to the owner, we think having owners review maintenance contracts is too much, does the design certification, could we include on the completion statement that the O&M manual is included as part of the completion statement. The person who submits the design is the person responsible for the manual, there are not any O&M regs to go along with your manual, we are going to be developing a set of manuals, the regulations do not dictate frequencies right now-they will. If you have a designer that does not want to be responsible for the O&M, just submit the manufacturer's instructions. If changes, then you become the responsible party, the designer is then beholden to the O&M manual. Now I'm the one responsible

for it. Whatever is being submitted, we need someone accountable to the manuals being submitted.

Advice is to change the completion statement.

Item 1.b. Allen Knapp (VDH) reviewed the current status of the emergency regulations for alternative onsite sewage systems.

In process for developing the regs, hoping to finish by Dec 09. Assembled ad-hoc committee, being facilitated by the Institute for Environmental Negotiation. 1/2 way through their meeting schedule, met yesterday, talked about performance and O&M, our expectation is that we will get a set of recommendations, organized and some meat as to the finer details that are perplexing us all, frequency of inspections, operation events, we're looking for recommendations to describe boundaries for performance. V'lent, Colin, Todd all there, movement toward a service contract, they are going to try to nail some things down, seems like a lot of people favoring the contract model, operating permits that get renewed at the time of transfer, ideas, nothing concrete, renewable operating concept, subject to renewal, combine with the time of transfer, void on time schedule or at time of property transfer, review AZ, NC rules, first 2 meetings have been free form to explore, the last two meetings will be more concrete, last meeting will be to review the final report and recommendations, compressed time frame, not enough time, need more meetings, the reality is that we don't have a lot of time, timeframe is very short, forced into a short time frame, need done by Dec. We have these 3 regulatory actions, interim rules, emergency regs valid for 12-months, and then the final regs, successfully building on each other. Final reg hopefully will be more polished. Would like the advisory committee to review the IEN report and the final rule. We established a new link on the ad hoc advisory committee.

Everyone should sign up on the Regulatory Townhall, we prefer to have specific topics instead of broad discussions. Comments should be forwarded to Barrett or Allen.

Weldon Cooper Institute for Public Service

Dwayne described a survey to understand the needs and problems with owners of alternative systems. This would be compared to experiences of owners of conventional systems. They are planning a telephone survey of about 600 alternative system owners. They are in the initial stages of the survey development. VDH wants to know if owners are adequately aware of their system and the maintenance needs. We'd like to know the percentage that have maintenance contracts; the average cost of O&M; are there differences between operator maintained and homeowner ignored; and what are the comparative frequencies of problems with alternative systems vs. conventional? They are hoping to finish the survey by the end of October and have some preliminary

results. The final report is planned to be completed by February, 2010. They can't complete the report before implementation of the emergency regulations but it will be useful for final regulations.

Item 1.c. Allen Knapp continued the review of regulatory activities

Two proposed regulations are currently for open comment: Schedule of Civil Penalties and Procedures under the Indemnification Fund. Both are under 60 day comment periods.

i) Final onsite regulations: We've been moving very slowly, begin to pick up the tempo now that we have timeline based on the emergency regulations, looking for a final product by the end of 2010. Trying to bring parts of the regs to this group that are not the same parts that the ad-hoc emergency regulations committee is working on. This means Re-use, sewer lines & pump stations, etc. We have looked at the parts that are posted on the website, they are still the most current, we will be adding and updating as we go along. The administrative piece is close to being in a final form.

ii) Review proposal from VDH for the conveyance portion of the regulations (John Aulbach, VDH). Initial attempt to draft that portion of the regs, focused on larger systems, not single families, John Schofield has been working on this, looked at SCAT regs from DEQ and pull out the appropriate pieces for the larger systems, its captured much of the SCAT regs, on the municipal side, the SCAT regs are the rule, a lot of designers working with municipal systems and our regs, want to provide a reg that is consistent so that there are the same rules in place. A # of engineers desired a consistency among the regs to advise their clients and prepare plans. I read the regs and pulled out my SCAT regs, John cut and pasted, I did not see any editing, why not just incorporate the regs? The physics are the physics, if the physics work at DEQ, then it should work here. Once you have a separate reg, then you get separate interpretations. Why not reference? There are pros & cons to both methods. Two agencies interpreting the same rule, if you referenced DEQ regs, whenever there is a question, we would have to ask DEQ for the answer, they may not be timely, they may not want to devote resources, they won't review plans for us, in adjudicating any dispute, if referenced to dEQ, then problems with holding an IFFC, same problem, another agency making a different decision, in the end, we opted for this pathway, recognizing both have problems. Any time you reference another code section, if DEQ changed their number, this reg would reference a useless code section. Through the legal lens, it is best to place the actual regs.

Why does this need to be in the regs? What's wrong with DEQ reviewing the collection system? The onsite portion includes the collection and its integral to the part of the VDH permit. The Town of Blacksburg should be reviewed, it's a different process and different permit. It's not unusual to get all of the collection as part of the design. Interpret the code such that we would say DEQ has

jurisdiction for all collection systems that would normally follow the SCAT regs if you ignored the ultimate permitting of the discharge? One agency review is nice. The current environment has bright line between discharging systems and into the soil. The line is getting blurrier with re-use, I guess it's something we could look at. I think it is a bad idea, don't know why DEQ would take it on. DEQ is not reviewing plans now. Currently reviewing mass drainfields under the SCAT regs for the collection system. But VDH can't hold their feet to the fire. Most engineers use the SCAT regs, most PEs will try to use them.

Any question with regard to the contents of the regs? Since it is cut & paste, there are some problems in the SCAT regs, some blatantly illegal things, DEQ would like to make changes to the SCAT regs, DEQ would suggest those changes, there is a lot of potential for divergence. According to EPA under liability, you can't allow overflow under federal regs, already have conflicts, force main designs are not workable, it seems duplication of effort and duplication of problem. What you may not have been seeing, the reliability on the pump stations, requirement for duplex pumps, there are so many more homes relying on it.

They are different, municipal systems have unbelievable peaking factors with I&A, thus your overboard discharge when mother nature putting hammer on it, nationwide, all need to be STE pumping stations, can't have a peaking capacity of 2.5 to 4.0 on the drainfield, it really is apples and oranges, this is big pipe stuff, manholes? I think the regs need to be different. We have packaging plants that can handle I&I, PEs balancing these issues. I'm glad to hear that because I don't see that in many parts of the country. Need freeboard. It's more onerous on the engineer.

Any difference between the number of homes they serve? 3-lot community system, are you now subject to something here that keeps it from being economical. That piece is not in the regulations. This test was written in the 80s, there's been a lot of changes. Where should we draw the lines on flow? Maybe a few new gates to trigger regulatory requirements, some use 10,000 gpd, some 3,000 gpd, some 1,000 gpd, a number of opportunities to draw the line, presumably we would keep what we've got on the small and then decide where to draw line. VDH needs to define "big." I would like to see the alternative sewers expanded from the current practice. When these rules written, none of that considered. It's a long time ago, Paragraph F on step collection, the DEQ rules are out dated.

Members will submit their comments and VDH will bring back. It's a word document, add a track changes section. Next time, can we have a line number copy from VDH so that we can better reference the regs?

iii) Allen asked the committee to help prepare the draft language on residuals management. Currently two pieces- the piece that VOWRA put together (white paper) and draft language that is cut and past from the current regulations. Mike

Lynn agreed to work with VOWRA and others (Bob Lee), asked Allen to send him the draft language. Gray Danilow at Tech, his focus has been with Biosolids, he might want to help with the residuals and what to do with it afterwards. Is the residuals posted on the web? Yes, is a meeting necessary? I think if we get a cadre of volunteers should be sufficient.

Item 2. Allen provided an update from the meetings between VDH and DPOR and stakeholders regarding the engineering exemption in Title 54.1 for onsite sewage systems. SB 1008 and related house bill sought to expand that exemption for certain kinds of pump systems (drip irrigation). The parties did not come to a consensus resolution, but they did agree to put off legislation for next 2 sessions pending adoption of the VDH regulations. Allen said he cautioned that the new onsite regulations may not provide the common ground for resolving the issue. There is a draft letter for the 2 agency heads to sign, that letter will be circulated to the parties in the process, then agency heads will sign, then it will be looked at again there. Any concern? No comments.

Item 3. Betterment loan eligibility program

Dwayne described the policy and listened to questions- ex. what is the department's liability and how are you going to make sure that it's really a failing system? This law could be against the constitution- prohibits states from abrogating contracts,. We had many of these same concerns, our role is to work with the patron, we raised other ways to introduce legislation, Lindsey Trittippoe, DEQ has to find that there is a leak to the tank and greater risk to the Commonwealth, so DEQ says you are eligible for the fund, it would be nice to have a fund set up for this, first step is to have the state say that their is a risk to the neighbors, the difference is a fund and you are not messing with someone's contractual obligations.

Item 4. Jim Bowles discussed changes to the well regs resulting from 2009 legislation, changes to our private well regs, first intended to speed up the process on geothermal wells, code requires a registration statement from the well driller, work the same way as an application, well driller responsible for giving detailed sketch , source of pollution, bring to HD, pay fee, then they can install well without any additional site visit from us. The other requirement was to develop well yield and storage for drinking water wells and look at current recommendations in regs, changed a "should" to a "shall", which will require residential drinking water wells to meet. Well driller certifies compliance with the standard. 5gallons per minute for 10 minutes. If you set a requirement for 150 gpd, then it is less than 1/3 gallon, long wait, not the yield of the well, it's performance of the water system. We are pursuing the fast track regulations.

Item 5. Next meetings: Sept. 18. 2 month intervals ok? If something needs to be looked at quickly in November, draft available by November? BOH meets October 16, ideally the emergency regs ready for 10/16 meeting, we have a 2 week back up to get the materials to the support staff, under ideal conditions, need draft of the emergency regs,

will that really happen? I don't know, that's the last time BOH meets this year. Enactment clause requires 30 day comment period, it doesn't say when it is, APA has no comment period for emergency regs, considering to publish reg with 30 day comment period with the reg going into effect, to address the comments, then you have to go back to the board, the 280 day deadline is April 6. Maybe make the meeting later so that we can look at the draft reg.

Comments from the public: Tom Ashton: what a refreshing an informal exchange, our previous chairman resigned, it would behoove the committee to affirm by who you were appointed by. Based on previous experience, be affirmed in writing with the dates of your term, could relieve pressure downstream, you did a great job as chairman, formal demeanor that this group is going to need, it will be different when you get into reg writing, I think you said don't want to conduct the meeting, but you may want to be prepared to that, maybe have a parliamentarian, supposedly under Roberts rule, when from advisory committee to tech. advisory committee, issues are now complex, can't be as formal as you should, limiting time and keeping people on topic, will mean agendas out in timely manner and their expectations of the committee, "we just want to see what you think" will not work. Last years, committee got nothing done, should not be a limit of discussion but no abuse, need open mike at the end, need to raise of hands, how much time they get. These things will bog down.

1:30 P.M. Meeting Adjourned.